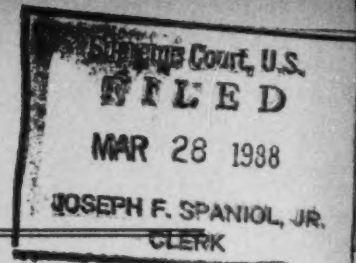


(2)
No. 87-1476



In The
Supreme Court of the United States
October Term, 1987

**WILLIAM E. SNEAD, PATRICIA I. SNEAD,
JOHN S. O'CONNOR and ROBERT RAY MILLER,**

Petitioners,
vs.

**THE CITY OF ALBUQUERQUE,
a municipal corporation,**

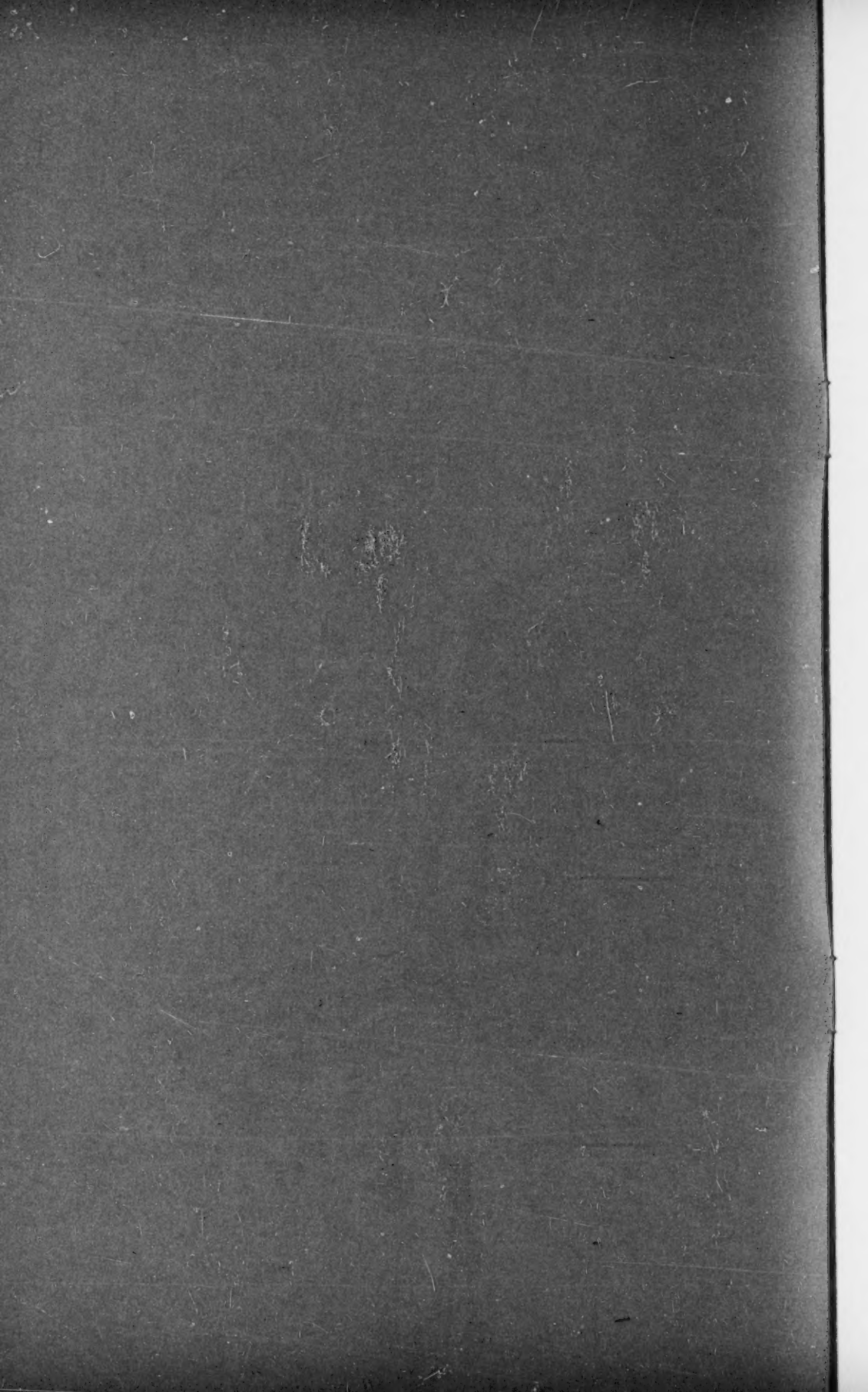
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the New Mexico classification of non-resident municipal electors in municipal general obligation bond elections, which excludes nonresidents who do not own and pay taxes on property in the municipality, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. Whether the New Mexico requirement that nonresident municipal electors file a certificate of eligibility to register to vote in municipal general obligation bond elections violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

3. Whether a decision that the New Mexico classification of and the registration requirements for non-resident municipal electors is unconstitutional should be applied retroactively (an issue raised, but not reached by the Tenth Circuit).

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STATEMENT OF THE CASE

In 1983 and 1985, Albuquerque, which is situated in Bernalillo County, held municipal general obligation bond elections. Petitioners were nonresidents of Albuquerque. They resided in and were registered to vote in

¹ Respondent is a political subdivision of the State of New Mexico and has no parent companies, subsidiaries or affiliates.

Bernalillo County. Petitioners William and Patricia Snead and John O'Connor owned and paid taxes on property in Albuquerque. Petitioner Robert Miller did not own property in Albuquerque. Petitioners William and Patricia Snead and John O'Connor were qualified to vote in the elections as nonresidents. Petitioner Robert Miller was not qualified to vote in the elections.

The New Mexico Constitution grants the right to vote in municipal general obligation bond elections to nonresidents who are qualified to vote in the county and who own and pay taxes on property within the municipality. N.M. Const. Art. IX, §12. Nonresidents, who are otherwise qualified, but who do not own and pay taxes on property within the municipality, are excluded from voting in municipal general obligation bond elections. The New Mexico implementing statutes provide that qualified nonresidents must register to vote in municipal general obligation bond elections by filing a certificate of eligibility stating that they are registered to vote in the county and have paid taxes on property within the municipality. N.M. Stat. Ann. §3-30-3. Resident qualified electors do not have to file a certificate of eligibility to vote.

Petitioners filed the instant action challenging the New Mexico classification of nonresident municipal electors and the registration procedures for nonresident municipal electors under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The District Court for the District of New Mexico granted Respondent's Motion for Summary Judgment

(Pet. App. B). The Tenth Circuit Court of Appeals affirmed the District Court's decision and held that:

1. The New Mexico classification of nonresident municipal electors bears a rational relationship to a legitimate state purpose. (Pet. App. A, p. 9).

2. The registration procedures for nonresident municipal electors bears a rational relationship to a legitimate state purpose. (Pet. App. A, p. 10).

Respondent, City of Albuquerque, respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking review of the Tenth Circuit's opinion in this case. That opinion has not been published.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The decision below does not conflict with the decisions of this Court.

The Tenth Circuit held that because nonresidents do not have a fundamental right guaranteed by the United States Constitution to vote in municipal elections, the strict scrutiny standard of review was inapplicable in the instant case, but that the "rational basis" standard of review was applicable.

This Court has applied the "strict scrutiny" standard of review only when reviewing classifications among residents who have a fundamental constitutional right to participate in general interest elections of the governmental unit in which they reside. *Hill v. Stone, et. al.*, 421 U.S. 289 (1975); *City of Phoenix, et. al., v. Kolodziejski*, 399 U.S. 204 (1970); *Cipriano v.*

City of Houma, et. al., 395 U.S. 701 (1969); *Kramer v. Union Free School District No. 15, et. al.*, 395 U.S. 621 (1969).

However, nonresidents do not have a constitutional right to participate in municipal elections even if they are directly and substantially affected by municipal actions. *Holt Civic Club, et. al., v. City of Tuscaloosa*, 439 U.S. 60 (1978). The "strict scrutiny" standard of review is designed to protect fundamental constitutional rights. If a fundamental constitutional right is not involved, as in the instant case, the "rational basis" standard of review is applicable to guarantee individual rights. *Holt, supra* at 74.

Petitioners' implicit premise is that once the state extends the right to vote to some nonresidents, the fundamental right to vote guaranteed by the United States Constitution is also extended to all nonresidents. This Court, however, has not extended the "one man one vote" principle of *Reynolds, et. al., v. Sims, et. al.*, 377 U.S. 533 (1964), to nonresidents of the governmental entity concerned. *Holt, supra* at 68-70. The "rational basis" standard of review is the applicable standard of review of classifications of nonresident electors because nonresidents do not have a fundamental constitutional right to vote. *Holt, supra* at 70.

2. Neither the decision below nor the record raises the issue of dilution of resident voter rights.

In their first reason for the grant of a writ, Petitioners assert that because New Mexico has extended the right to vote in municipal general obligation bond

elections to nonresidents who own property in the municipality, the voting rights of resident nonproperty owners is unconstitutionally diluted and that, consequently, the strict scrutiny standard of review should apply.

(a) The Tenth Circuit did not decide the question whether the right to vote of resident nonproperty owners is unconstitutionally diluted. The issue is not within the scope of the decision below.

(b) Moreover, the facts of record do not support the formulation or resolution of the issue. Petitioners are nonresidents of Albuquerque and cannot raise the hypothetical issue on behalf of residents.

(c) Petitioners assume that by extending the vote to property owning nonresidents, the voting rights of resident nonproperty owners is diluted. The record does not address or support that assumption.

(d) Petitioners' argument assumes that the interest of resident and nonresident property owners in the creation of municipal indebtedness is different in kind from the interest of resident nonproperty owners. The basis of this Court's decisions in *Phoenix, supra* and *Cipriano, supra* is that general obligation bonds are of general interest to residents whether or not they own property because all residents bear the economic cost of the bonds. The inclusion of nonresident municipal electors as voters does not dilute the vote of resident nonproperty owners because the interest of both groups is similar and financial in nature. In New Mexico, municipal general obligation bonds may be approved by the

voters even if no property owners vote in the election. Cf. *Hill, supra*.

(e) It is not clear whether Petitioners advocate a review of the asserted dilution of resident nonproperty owners' voting rights or a review of the New Mexico classification of nonresident municipal electors. In either case, the "strict scrutiny" standard of review is applied only if a fundamental constitutional right to vote is involved. The instant case, however, concerns the rights of nonresidents, who do not have a fundamental constitutional right to vote and the "rational basis" standard of review is applicable.

(f) All residents of Albuquerque who are registered to vote have a right to vote in municipal general obligation bond elections whether or not they own property. The vote of all residents and all nonresident municipal electors are counted equally. N.M. Stat. Ann. §3-30-6. No distinction is made between the vote of nonproperty owners and property owners based on any group characteristics. No differential weight is given to the vote of either group. The voting rights of resident nonproperty owners is not diluted. *Gordon v. Lance*, 403 U.S. 1 (1971).

3. The Tenth Circuit's determination that it is constitutionally permissible to exclude nonresidents who do not own property in a municipality from voting in municipal general obligation bond elections does not contradict this Court's decisions.

General obligation bonds are financial in nature. Nonresidents who own property in a municipality that issues general obligation bonds share the economic cost

of the indebtedness with residents of the municipality. Nonresidents who do not own property in the municipality do not share the economic cost. The distinction between the interest of the two groups of nonresidents in a general obligation bond election is financial.

The decisions of this Court cited by Petitioners for the proposition that it is unconstitutional to make any classification of voters based on property ownership, involved classifications of municipal residents who had a fundamental constitutional right to vote in municipal bond elections and who shared the economic cost of the municipal indebtedness, whether or not they owned property. *Phoenix, supra*; *Hill, supra*. In the instant case, nonresidents who do not own property in Albuquerque have no fundamental constitutional right to vote in Albuquerque elections and do not share the economic cost of Albuquerque's general obligation bonds. They do not have the interest, recognized by this Court in *Phoenix, supra* and *Hill, supra*.

The Equal Protection Clause to the Fourteenth Amendment requires the uniform treatment of persons standing in the same relation to the governmental action challenged. *Reynolds, supra*. Where the fundamental constitutional right to vote is not involved, a classification of voters based on property ownership is constitutional if the classification is rationally related to the achievement of state purposes. *Salyer Land Company, v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973).

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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